

From: [Brent Smith](#)
To: austin.kinghorn@oag.texas.gov
Subject: Border Crisis
Date: Tuesday, May 4, 2021 4:26:54 PM
Attachments: [Border Crisis open letter.docx](#)
[Signed Declaration of Local State of Disaster.pdf](#)

Mr. Kinghorn,

I am the Kinney County Attorney here in Brackettville, Texas. Our County, along with 20 others, have declared a Local State of Disaster due to the imminent danger posed to our citizens from the thousands of illegal aliens that have invaded our State. As Texans, we will no longer allow the sovereignty and territorial integrity of our borders to be violated.

Due to the current administration's lack of concern and utter failure to uphold its constitutional obligation and protect our borders from invasion, Texas is experiencing an unprecedented wave of illegal immigration, the likes of which has never been seen before. With no aid coming from the "leadership" in Washington D.C., the people of Texas are now looking to our own elected representatives in Austin to step in and uphold those protections guaranteed by the U.S. Constitution.

Operation Lone Star has resulted in more apprehensions along the highways, but the vast majority of human trafficking occurs on private property with foot traffic. Our homes are being broken into in the middle of the night. The main street of our small town is now the place of high-speed car chases. Walking outside on our own property after dark is no longer safe. The residents of our county no longer enjoy the comfort and safety of their own home. Words cannot adequately describe the conditions on the ground and the vast number of illegal aliens that are flooding into our county. All of this has resulted in the deaths of several people and tremendous amounts of property damage, which will certainly become worse in the coming months if no action is taken to prevent it. Make no mistake, our great state of Texas is being invaded by thousands each day.

What Texas needs is boots on the ground at the border. Preventing illegal aliens from traveling 10 miles into the state is essential. The amount of resources required to confront this issue 20 miles inside of Texas drastically increases. To effectively prevent the invasion of our State, we need to confront this issue close to the border. Texas Counties are done waiting on the Federal Government. The State of Texas has the sovereign power to enforce its own borders. Supreme Court Justice Antonin Scalia clearly established this point by stating, "It is undeniable that the State has a sovereign power to protect its borders more rigorously than the federal government if it so wishes, absent any valid federal prohibition enacted by Congress. The President's policy of lax federal enforcement does not constitute such a prohibition that denies the State their sovereign power to do so."

If the Texas Governor does not provide adequate resources on the border by deploying boots on the ground, the Counties along the border will act on their own accord to protect their residents. We have already contacted our local border patrol offices and informed them about our intentions. They are more than willing to help out in every way possible.

I would like AG Paxton to assist us in this endeavor and provide the legal resources that we may need if the Federal Government decides to litigate the issue. We, as Texans, have no other option at this point, and feel that upholding the sovereignty and territorial integrity of our borders is vital for our safety.

I will attach our Declaration of Local State of Disaster along with a letter that was published describing our situation. I hope to hear from your office soon regarding this matter.

Brent Smith
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KINNEY COUNTY ATTORNEY

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Texas is Being Invaded

I was recently elected as the County Attorney for Kinney County, Texas, which is adjacent to the Mexican border. Our county is being bombarded by hundreds of illegal aliens on a daily basis. Our local law enforcement is overwhelmed with illegal alien smuggling activity and high-speed pursuits occurring along our highways and within the residential streets in our small town. These individuals, who unlawfully enter our county, originate from many different countries from around the world, including the Middle East. I highly doubt most Texans, or their elected representatives, fully comprehend the magnitude of the situation. Our homes are being broken into in the middle of the night. The main street of our small town is now the place of high-speed car chases. Walking outside on our own property after dark is no longer safe. The residents of our county no longer enjoy the comfort and safety of their own home. Words cannot adequately describe the conditions on the ground and the vast number of illegal aliens that are flooding into our county. All of this has resulted in the deaths of several people and tremendous amounts of property damage, which will certainly become worse in the coming months if no action is taken to prevent it. Make no mistake, our great state of Texas is being invaded by thousands each day.

States Have the Power to Protect Their Borders

The U.S. Constitution does not grant the federal government the exclusive authority to enforce its immigration policies along its borders. As such, the State of Texas, as a sovereign political entity, has the *concurrent authority* to enforce its own borders and protect the health, safety, and welfare of its citizens. An examination of the U.S. Constitution establishes that the only exclusive power granted to the federal government concerning aliens is the power “to establish a uniform rule of naturalization.” This authority was granted exclusively to the federal government because the authors of the U.S. Constitution wanted to ensure that the qualifications for becoming a citizen would be uniform throughout the several states. A straightforward interpretation of this text limits the scope of this exclusive authority to the legislative function of Congress in creating a uniform set of laws, but does not go so far as granting an exclusive authority in border enforcement. The U.S. Constitution addresses the enforcement of State borders under Article IV, Section 4, which “*guarantees*” that the federal government shall protect each State of the Union against “*invasion*”. This constitutional guarantee is not a voluntary undertaking which the federal government can choose to ignore. To the contrary, it is a constitutional mandate that guarantees the protection of its citizens, of all the States within the Union. Recognizing the importance of such a guarantee, the authors of the U.S. Constitution also granted the States the concurrent authority to act in times of “*invasion or imminent harm*” under Article I, Section 10, Clause 3. It is only logical to conclude that the authors of the U.S. Constitution granted this concurrent authority for states to act on their own behalf as a contingency for when the federal government is not able, or willing, to uphold its guarantee of protection under Article IV, Section 4.

Texas Must Act

Due to the current administration's lack of concern and utter failure to uphold its constitutional obligation and protect our borders from invasion, Texas is experiencing an unprecedented wave of illegal immigration, the likes of which has never been seen before. With no aid coming from the "leadership" in Washington D.C., the people of Texas are now looking to our own elected representatives in Austin to step in and uphold those protections guaranteed by the U.S. Constitution.

Texas should act on its own accord to enforce its border with Mexico and protect its citizens with the concurrent authority granted to States in the U.S. Constitution. It is my opinion that an emergency declaration by Governor Abbott or the Texas Legislature would authorize Texas to take certain steps in the enforcement of its own borders and the protection of its citizens' health, safety, and welfare. It is imperative that Texas acts to protect those constitutional rights of its citizens that are guaranteed under Article IV, Section 4 of the U.S. Constitution. Such actions should include the enforcement of current federal immigration law that has been enacted by Congress, despite any unconstitutional executive orders to the contrary.

Texas should act by aiding law enforcement in this current border crisis and amend Section 20.05 of the Texas Penal Code (*Smuggling of Persons*). To successfully prosecute a smuggler of illegal aliens under the Texas Penal Code, the State must provide evidence that the suspect carried out the smuggling for their own "pecuniary benefit" (e.g., money). This is exceedingly difficult when those persons being smuggled are illegal aliens who have been released into the public with no way of locating them for testimonial evidence. Removing this "pecuniary benefit" element, or altering the evidentiary requirements for establishing the same, would aid our Texas courts in more successful prosecutions of illegal smuggling of persons. To further exacerbate the situation, the State mandated spacing requirements that jails must comply with due to COVID-19 has resulted in the release of many known smugglers and illegal aliens into our communities. Unfortunately, the high-speed chases that occur on our border routinely involve smugglers who have been apprehended in the past, but not prosecuted due to the unavailability of witnesses or evidence establishing that such was done for the pecuniary benefit of the driver.

If our state representatives lack the fortitude to act in protecting the constitutional rights of Texans, other possible solutions should be pursued on a county wide basis. The County Sheriff is vested with a tremendous amount of constitutional authority to protect his or her residents. Kinney County residents are thankful that their Sheriff, Brad Coe, places a high priority on their protection. However, the limited resources of one county alone will not successfully address the current border crisis. If our state representatives fail to act, a coalition of counties should combine their resources and coordinate their activities to successfully protect their own residents.

I write this letter to inform Texans of the current crisis we are facing on our border, and ask that we come together in forming a solution. The constitutional rights of Texans must no longer be ignored and violated by our elected representatives in BOTH Washington D.C. and Austin. It is important to realize that we are only 3 months into a 4-year Presidential term. The current status quo of our border is NOT sustainable. The border crisis that Texans are facing demands action NOW.

Respectfully,

Brent Smith
Kinney County Attorney



Fellow Texans,

Today in Kinney County we are declaring a Local State of Disaster due to the thousands of illegal aliens invading our great State of Texas. This invasion has resulted in our residents being assaulted, injured, threatened, robbed, and intimidated by illegal aliens from around the world. As Texans, we will no longer allow the sovereignty and territorial integrity of our borders to be violated.

On April 21, 1836, Texas won her independence during the battle at San Jacinto, the final and decisive battle of the Texas Revolution. Today, 185 years later, Texas is once again under siege, as thousands upon thousands of illegal aliens invade our State through our border with Mexico.

The current status quo of our border is NOT sustainable, and endangers the health, life, and property of our residents. To effectively maintain the sovereignty and territorial integrity of our borders, the counties in Texas must stand together against this invasion and demand action from our governor and state leadership.

Numerous counties across Texas have already pledged to sign their own Declaration of Local State of Disaster. We look forward to coordinating with those counties and other state officials in establishing the necessary safeguards that will keep our residents safe.

A handwritten signature in black ink, appearing to read "Tully Shahan", written over a horizontal line.

Tully Shahan, County Judge
Kinney County, Texas

A handwritten signature in black ink, appearing to read "Brent Smith", written over a horizontal line.

Brent Smith, County Attorney
Kinney County, Texas



FILED FOR RECORD
at 11:30 o'clock A.M

APR 21 2021

COUNTY & DISTRICT CLERK, KINNEY CO.

DECLARATION OF LOCAL STATE OF DISASTER

WHEREAS, the health, life, and property of the residents of Kinney County is under an imminent threat of disaster from the human trafficking occurring on our border with Mexico. The ongoing border crisis has resulted in thousands of illegal aliens invading Kinney County and overwhelming our local, state, and federal law enforcement. This continual violation of our sovereignty and territorial integrity has resulted in residents of Kinney County being assaulted, threatened with violence, and robbed, while also sustaining vast amounts of property damage; and

WHEREAS, the public health and safety of the residents of Kinney County is under an imminent threat of disaster from an elevated risk of exposure to unknown variants of COVID-19 resulting from the human trafficking occurring on our border with Mexico. The limited resources of Kinney County cannot adequately furnish the necessary procedures and facilities set forth by the Centers for Disease Control and Prevention for the testing and quarantining of thousands of illegal aliens who may be infected with unknown variants of COVID-19, or other infectious diseases that residents have not been vaccinated for; and

WHEREAS, the County Judge of Kinney County, Texas, has determined that extraordinary measures must be taken to ensure the protection of the health, safety, and welfare of county residents.

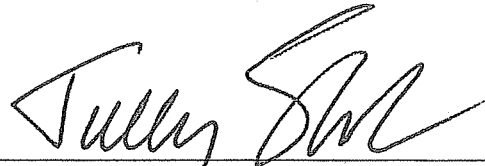
NOW, THEREFORE, BE IT PROCLAIMED BY THE COUNTY JUDGE OF Kinney County, Texas:

1. That a local state of disaster is hereby declared for Kinney County, Texas, pursuant to Section 418.108(a) of the Texas Government Code.
2. Pursuant to Section 418.108(b) of the Texas Government Code, the state of disaster shall continue for a period of not more than seven days from the date of this declaration unless renewed by the County Judge or continued by the Commissioners' Court of Kinney County, Texas.
3. Pursuant to Section 418.108(c) of the Texas Government Code, this declaration of a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the County Clerk of Kinney County, Texas.
4. Pursuant to Section 418.108(d) of the Texas Government Code, this declaration of a local state of disaster activates the Kinney County emergency management plan.
5. Pursuant to Section 362.002(a) of the Texas Local Government Code, this local state of disaster is intended to authorize, and does hereby declare, that a state of civil

emergency exists in Kinney County, Texas, and requests the assistance of additional law enforcement to uphold the sovereignty and territorial integrity of the county.

6. Pursuant to Section 433.005(a) of the Texas Government Code, this local state of disaster is intended to request, and does hereby request, that the Governor of Texas provide state military forces to aid in controlling conditions in the county by assisting the County Sheriff in the enforcement of law and the preservation of the sovereignty and territorial integrity of the county.
7. That this declaration hereby authorizes the use of all lawfully available resources and authority granted under both the Constitution of Texas and the Constitution of the United States.
8. That this declaration shall take effect immediately from and after its issuance and, upon approval by the Kinney County Commissioners' Court, shall continue in effect until terminated by the County Judge. Pursuant to this declaration, additional directives may be issued by the County Judge at any time deemed necessary.

DECLARED this 21st day of April 2021.

A handwritten signature in black ink, appearing to read 'Tully Shahan', written over a horizontal line.

Tully Shahan, County Judge
Kinney County, Texas